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**MINASIAN, SPRUANCE,
MEITH, SOARES &
SEXTON, LLP** ATTORNEYS AT

LAW
A Partnership Including Professional Corporations

1681 BIRD STREET
P.O. BOX 1679
OROVILLE, CALIFORNIA 95965-1679

PAUL R. MINASIAN, INC.
JEFFREY A. MEITH
M. ANTHONY SOARES
DAVID J. STEFFENSON
DUSTIN C. COOPER

WILLIAM H. SPRUANCE,
Of Counsel

MICHAEL V. SEXTON,
Of Counsel

TELEPHONE:
(530) 533-2885

FACSIMILE:
(530) 533-0197

May 15, 2008

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

Re: Oroville Facilities, Project No. 2100-052;
Withdrawal of Opposition to Relicensing and Comment on Submittal of
Agreement

Dear Secretary Bose:

This office represents the Butte Water District (BWD), Sutter Extension Water District (SEWD), Biggs-West Gridley Water District (BWGWD), Richvale Irrigation District (RID) and Western Canal Water District (WCWD) (collectively "Districts"). The Districts have water diversion agreements with the California Department of Water Resources (DWR) that provide for water deliveries from Oroville Facilities and that preserve the issue of liability for cold-water temperature impacts to agriculture from these deliveries. On February 13, 2006, the Districts filed with the Federal Energy Regulatory Commission (FERC) a Motion to Intervene in the Relicensing proceedings of DWR's application for Oroville Facilities, P-2100 ("Oroville Facilities"). In that Intervention, as well as in others filed in the above-referenced relicensing proceeding, the Districts opposed the grant of a new FERC license to DWR for Oroville Facilities for failure to address the adverse cold-water impacts on the agricultural interests the Districts represent.

On an almost continuous basis since the fall of 2005, DWR and the Districts have negotiated in good faith regarding potential agricultural impacts related to the temperature of water delivered to the Districts from the Oroville Facilities. On April 23, 2008, the Districts and DWR executed the agreement entitled "Amendment to Agreements on Diversion of Water from the Feather River and Settlement of Issues Related to the Temperature of Water Diversions" (Settlement Agreement). The Settlement Agreement, recently filed with FERC by DWR, resolves all concerns and protests of the Districts related to the reserved issue of temperature of water delivered from the Oroville Facilities and, combined with the provisions of DWR's

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
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comprehensive Settlement Agreement for Licensing of the Oroville Facilities, adequately protects the Districts' interests, including the beneficial use of irrigation water by the Districts as set forth in the California Central Valley Basin Plan.

The Settlement Agreement resolves contractual and water rights issues not subject to the FERC license for Oroville Facilities and it pertains to areas outside the FERC boundary. Therefore, the Districts respectfully request FERC to consider this Settlement Agreement as outside of its jurisdiction and that it not include any of its terms and conditions in the new license issued to DWR for Oroville Facilities.

In their FERC filings, the Districts cited a 2005 study conducted in collaboration with DWR as evidence of the damage caused by cold-water on rice production. That study resulted in a report entitled "Spatial Distribution of Water Temperature Affects on Rice Productivity" which characterized the yield response of rice to cold water effects at a specific point in any given field. However, neither the report, nor the study, provided a methodology to relate cold-water effects to entire fields. Therefore, DWR and the Districts have formulated a methodology which accounts for and quantifies cold-water impacts to rice production for all fields within the Districts with compensation commencing with the 2008 crop year. The Settlement Agreement is based on those efforts, and implementation of the methodology contained in the Settlement Agreement constitutes full compensation for any such impacts of water deliveries from the Thermalito Afterbay and releases to the Feather River.

Therefore, in light of the Settlement Agreement, this letter serves to withdraw the Districts' opposition to the issuance of a FERC license for Oroville Facilities P-2100, and the Districts hereby advocate for FERC's issuance of a new 50-year license for the Oroville Facilities, as proposed by DWR. The Districts do not hereby withdraw their Intervention so they may continue to participate in the Relicensing process, including any hearings, before FERC.

Sincerely,

MINASIAN, SPRUANCE, MEITH,
SOARES & SEXTON, LLP

By: 
JEFFREY A. MEITH

JAM/jg

cc: Rick Ramirez, Program Manager
Oroville Facilities Relicensing
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814
Joint Water Districts and Western Canal Water District

**MINASIAN, SPRUANCE,
MEITH, SOARES &
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DUSTIN C. COOPER

WILLIAM H. SPRUANCE,
Of Counsel

MICHAEL V. SEXTON,
Of Counsel

TELEPHONE:
(530) 533-2885

FACSIMILE:
(530) 533-0197

May 16, 2008

Lester Snow, Director
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Mr. Snow,

This office represents the Butte Water District (BWD), Sutter Extension Water District (SEWD), Biggs-West Gridley Water District (BWGWD), Richvale Irrigation District (RID) and Western Canal Water District (WCWD) (collectively "Districts"). On February 13, 2006, the Districts filed with the Federal Energy Regulatory Commission (FERC) a Motion to Intervene in the proceedings of the California Department of Water Resources' (DWR) application for Relicensing of Oroville Facilities, Project 2100 ("Oroville Facilities"). In that Intervention, as well as in other filings with FERC, the Districts opposed the grant of a new FERC license to DWR for failure to address the adverse cold-water impacts on the Districts' agricultural interests they represent. On August 20, 2007, the Districts filed comments with DWR on the Draft Environmental Impact Report (DEIR) for Oroville Facilities requesting that DWR further investigate the impacts of cold-water deliveries on rice production. In addition, the Districts have water diversion agreements with DWR that provide for water deliveries from Oroville Facilities and that preserve the issue of liability for cold-water temperature impacts to agriculture from these deliveries.

As you know, on an almost continuous basis since the fall of 2005, DWR and the Districts have negotiated in good faith regarding potential agricultural impacts related to the temperature of water delivered to the Districts from the Oroville Facilities. On April 23, 2008, the Districts and DWR executed the agreement entitled "Amendment to Agreements on Diversion of Water from the Feather River and Settlement of Issues Related to the Temperature of Water Diversions" (Settlement Agreement). The Settlement Agreement resolves all concerns and protests of the Districts related to the reserved issue of temperature of water delivered to the Districts from the Oroville Facilities. The terms of the Settlement Agreement, combined with the provisions of DWR's comprehensive Settlement Agreement for Licensing of the Oroville Facilities, adequately protect the Districts' interests, including the beneficial use of irrigation

Lester Snow, Director
Department of Water Resources
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water by the Districts as set forth in the California Central Valley Basin Plan and fully resolves the issue of cold-water effects raised in the above mentioned water diversion agreements. Compensation under the Settlement Agreement commences with the 2008 crop year.

Therefore, in light of the Settlement Agreement, this letter serves to rescind the Districts' Comments on DWR's DEIR for Oroville Facilities. Also, the Districts will file letters with FERC and the California State Water Resources Control Board (SWRCB) withdrawing their opposition to Relicensing of Oroville Facilities P-2100 and requesting issuance of a new license by FERC and a Clean Water Act Section 401 Water Quality Certification by SWRCB. In addition, the Districts will continue to participate in the FERC Relicensing process for Oroville Facilities.

Sincerely,

MINASIAN, SPRUANCE, MEITH,
SOARES & SEXTON, LLP

By: 
JEFFREY A. MEITH

JAM/jg

cc: Rick Ramirez, Program Manager
Oroville Facilities Relicensing
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Joint Water Districts and Western Canal Water District

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MICHAEL V. SEXTON,
Of Counsel

TELEPHONE:
(530) 533-2885

FACSIMILE:
(530) 533-0197

May 16, 2008

Victoria Whitney, Chief
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Ms. Whitney:

This office represents the Butte Water District (BWD), Sutter Extension Water District (SEWD), Biggs-West Gridley Water District (BWGWD), Richvale Irrigation District (RID) and Western Canal Water District (WCWD) (collectively "Districts"). On February 13, 2006, the Districts filed with the Federal Energy Regulatory Commission (FERC) a Motion to Intervene in the Relicensing proceedings of the California Department of Water Resources' (DWR) for Oroville Facilities, Project 2100 ("Oroville Facilities"). In that Intervention, as well as in other filings made with FERC, the Districts opposed the grant of a new FERC license to DWR for failure to address the adverse cold-water impacts on the agricultural interests the Districts represent. On August 20, 2007, the Districts filed Comments with DWR on the Draft Environmental Impact Report (DEIR) for the Oroville Facilities Relicensing requesting that DWR further investigate the impacts of cold-water deliveries on rice production. In addition, the Districts have water diversion agreements with DWR that provide for water deliveries from DWR's Oroville Facilities and that preserve the issue of liability for cold water temperature impacts to agriculture from these deliveries.

On an almost continuous basis since the fall of 2005, DWR and the Districts have negotiated in good faith regarding potential agricultural impacts related to the temperature of water delivered to the Districts from the Oroville Facilities. On April 23, 2008, the Districts and DWR executed the agreement entitled "Amendment to Agreements on Diversion of Water from the Feather River and Settlement of Issues Related to the Temperature of Water Diversions" (Settlement Agreement). The Settlement Agreement resolves all concerns and protests of the Districts related to the reserved issue of temperature of water delivered to the Districts from the Oroville Facilities and it also amends the diversion agreements, referenced above, for the same purpose. The terms of the Settlement Agreement, combined with the provisions of DWR's comprehensive Settlement Agreement for Licensing of the Oroville Facilities, adequately protect the Districts' interests, including the beneficial use of irrigation water by the Districts as set forth

Victoria Whitney, Chief
State Water Resources Control Board
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in the California Central Valley Basin Plan. Therefore, in light of the Settlement Agreement, the Districts have agreed to withdraw their opposition to DWR's application with FERC for Relicensing of Oroville Facilities and have issued a statement in support of issuance of a new 50-year license as proposed by DWR. Also, the Districts have sent a letter to DWR (copy enclosed) withdrawing their comments on the DEIR.

In their comments on the DEIR, the Districts cited a 2005 study conducted in collaboration with DWR as evidence of the damage caused by cold-water on rice production. That study resulted in a report entitled "Spatial Distribution of Water Temperature Effects on Rice Productivity" which characterized the yield response of rice to cold water effects at a specific point in any given field. However, neither the report, nor the study, provided a methodology to relate cold-water effects to entire fields. Therefore, DWR and the Districts have formulated a methodology which accounts for and quantifies cold-water impacts to rice production for all fields within the Districts. The Settlement Agreement is based on those efforts, and implementation of the methodology contained in the Settlement Agreement, commencing with the 2008 crop year, constitutes full compensation for any such impacts of water deliveries from the Thermalito Afterbay and releases to the Feather River.

As a result of, and in accordance with, the Settlement Agreement, the Districts hereby respectfully request the State Water Resources Control Board (SWRCB) to issue a Clean Water Act Section 401 Water Quality Certification to DWR for Relicensing of Oroville Facilities. The Settlement Agreement settles contractual issues between DWR and the Districts that are outside of FERC's jurisdiction, and which the Districts do not wish to have incorporated in the FERC license. Therefore, we hereby respectfully request that the SWRCB not include any of the Settlement Agreement terms and conditions in the 401 Water Quality Certification to be submitted to FERC.

Sincerely,

MINASIAN, SPRUANCE, MEITH,
SOARES & SEXTON, LLP

By: 

JEFFREY A. MEITH

JAM/jg

Enclosure

cc: ✓ Rick Ramirez, Program Manager
Oroville Facilities Relicensing
Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814 (w/o encl.)

Joint Water Districts and Western Canal Water District (w/o encl.)